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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,395	04/01/2004	Marcus Braun	04265398	7589

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HANLEY, FLIGHT & ZIMMERMAN, LLC
150 S. WACKER DRIVE
SUITE 2100
CHICAGO, IL 60606

EXAMINER	
PEFFLEY, MICHAEL F	

ART UNIT	PAPER NUMBER
3739	

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08/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/815,395	BRAUN, MARCUS	
	Examiner	Art Unit	
	Michael Peffley	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

This action is intended to correct deficiencies in the previous Final Office action of June 4, 2009. This action is also a Final Office action with the response period restarting with the mailing of this action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoon (5,954,731) in view of the teaching of Tovey et al (5,643,294).

With respect to claim 1, Yoon discloses a surgical instrument comprising a handle (12,68,72) having a front end and a rear end with the rear end portion linked to a proximal end portion of a tubular shaft (10). The shaft has a distal end linked to one or more instrument heads (18a,18b) so as to allow the instrument head to bend relative to the tube shaft (see Figures 7A-C and 8). The head includes rotatably supported end effectors having a pivotable engaging element (112a, 112b), and the handle has a plurality of manipulators (20b, 20a and handles 68,72). The handle is pivotally supported at the tube shaft via a pivot shaft (84, etc.) that allows the handle to be pivoted (shown in Figure 2), and the handle is laterally offset with respect to the tube shaft (see Figure 5). The only feature not expressly taught by Yoon is a manipulator comprising a rotary knob being rotatably supported on the front end portion of the handle member.

Tovey et al disclose an analogous forceps device having a handle portion (12) linked to a tubular member (14) with the handle comprising multiple

manipulators/operating mechanisms for operating the end effector. In particular, Tovey et al disclose a rotary knob (32) mounted to the front end of the instrument handle (with the tubular member connected to the rear end of the handle) for providing rotational control of the device.

To have provided the Yoon device, which discloses rotatably and angularly mounted end effectors, with a rotary knob means on the front end of the handle device to control the rotation of the end effectors would have been an obvious design consideration for one of ordinary skill in the art since Tovey et al disclose such a control means used in an analogous instrument.

Regarding claim 2, the instrument handle forms a mechanism for bending the instrument head (see Figures 7A-7C).

Regarding claim 3, the instrument handle is pivotable past a parallel position (Figure 2 shows the handle in a 90 degree position as well as aligned with the tube).

Regarding claims 4-6, the rotary knob (70) of Tovey is mounted at a distal end portion (i.e. upper section) of a handle member (50) and would be similarly mounted on the Yoon device. Inasmuch as there is no designation for what constitutes the "longitudinal axis of the instrument handle", any axis along the length of the handle may be deemed the "longitudinal axis". Since the Yoon handles (68,72) may be rotated to any desired angle from 0 to 90 degrees (Figure 2), the rotary knob located at the front end of the device (36), as suggested by Tovey, would be inclined with respect to the Yoon handles when the Yoon handles are in an angular position.

Regarding claims 7 and 8, the first manipulator (32) is provided at the distal tip of the instrument handle, which language is deemed essentially the same as the first manipulator being provided “at the front end” of the handle as set forth in claim 1. The manipulator is clearly adapted to be operated by fingers of a human hand.

Regarding claims 9 and 10, Yoon clearly discloses the use of a gear train (Figure 5) for actuation of a rotary manipulator, and the use of such a gear train with a manipulator located at the front end of the handle, as suggested by Tovey et al, would be an intuitive inclusion.

Regarding claims 11 and 12, Yoon clearly provide a lever shaped manipulator (74) which forms part of the handle, the manipulator being pivotable (see outlines in Figure 2) to operate the end effector.

Regarding claim 13, there is no definition for what is meant by “an ergonomically shaped handle member”, and the examiner maintains that the Yoon handle inherently meets such a broad limitation.

Regarding claim 14, see the explanation with respect to claim 1 whose features are essentially the same as claim 14.

Regarding claim 15, the manipulators are clearly adapted to be operated by the fingers of a human hand.

Regarding claim 16, rotation of the instrument handle would not necessarily cause rotation of the first manipulator. Whether it's the rotation of the levers (68,72) which would not affect the rotation of the first manipulator, or it's the rotation of the

entire handle assembly (12,68,72) whereby the first manipulator, as modified by the teaching of Tovey, could be held stationary while the rest of the handle is rotated.

Response to Arguments

It is noted that the examiner had previously erroneously included the Hassler reference in the statement of rejection. The examiner apologizes for any confusion resultant from this typographical error and has corrected the rejection to properly identify the Tovey reference as the teaching reference for locating a rotary manipulator at the front end of a handle assembly to control the bending of an instrument head at the distal end of the assembly.

Regarding the dependent claims, the examiner notes that applicant had not substantively argued the merits of any of the dependent claims in the response of January 8, 2009. Rather, applicant had merely amended independent claims 1 and 14 to more specifically locate the rotary manipulator knob to the front end of the instrument handle, and then argued the Yoon reference in combination with the Hassler reference failed to show such a location for the manipulator. The examiner maintains that the Tovey reference clearly provides proper motivation and support to include such a manipulator at such a location of an operator handle (such as taught by Yoon). Claims 15 and 16, newly added with the amendment of January 8, 2009, recite limitations that are clearly ascertained from the prior art references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Peffley/
Primary Examiner, Art Unit 3739

/mp/
August 4, 2009